

Passed by both Houses



New South Wales

Courts Legislation Further Amendment Bill 2001

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2001*



New South Wales

Courts Legislation Further Amendment Bill 2001

Act No , 2001

An Act to amend various Acts with respect to courts, court procedures, judicial officers and related matters; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Courts Legislation Further Amendment Act 2001*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Acts

The Acts specified in Schedules 1–5 are amended as set out in those Schedules.

Schedule 1 Amendment of District Court Act 1973 No 9

(Section 3)

[1] Section 63A Arbitration under Arbitration (Civil Actions) Act 1983

Omit section 63A (3) (b) and (c).

[2] Section 162 Purpose of Part

Omit “if the parties to the proceedings concerned have agreed to that course of action” from section 162 (1).

[3] Sections 164A–164C

Omit the sections. Insert instead:

164A Referral by Court

- (1) If it considers the circumstances appropriate, the Court may, by order, refer any proceedings, or part of any proceedings, before it (other than any or part of any criminal proceedings) for mediation or neutral evaluation, and may do so either with or without the consent of the parties to the proceedings concerned.
- (2) The mediation or neutral evaluation is to be undertaken by a mediator or evaluator agreed to by the parties or, if the parties cannot agree, by a mediator or evaluator appointed by the Court, who (in either case) may, but need not, be a person whose name is on a list compiled under this Part.

164B Duty of parties to participate

It is the duty of each party to the proceedings the subject of a referral under section 164A to participate, in good faith, in the mediation or neutral evaluation.

164C Costs of mediation and neutral evaluation

The costs of mediation or neutral evaluation, including the costs payable to the mediator or evaluator, are payable:

- (a) by the parties to the proceedings, in such proportions as they may agree among themselves, or
- (b) if the Court makes an order as to the payment of those costs—by one or more of the parties, in such manner as the order may specify.

[4] Schedule 3 Savings and transitional provisions consequent on amendments to this Act

Insert at the end of the Schedule with appropriate Part and clause numbers:

**Part Provisions consequent on enactment of
Courts Legislation Further Amendment
Act 2001**

Application of amendments

- (1) Section 63A and Part 3A, as amended by the *Courts Legislation Further Amendment Act 2001*, extend to and in respect of proceedings instituted before the amendments took effect, except as provided by subclause (2).
- (2) The amendments made by that Act to Part 3A have no effect in relation to a matter that, at the time the amendments took effect, had already been referred for mediation or neutral evaluation under that Part.

Schedule 2 Amendment of Evidence on Commission Act 1995 No 26

(Section 3)

Section 4 Definitions

Insert the following at the end of paragraph (e) of the definition of *superior court*:

- and
- (f) the District Court,

Courts Legislation Further Amendment Bill 2001

Schedule 3 Amendment of Judicial Officers Act 1986 No 100

**Schedule 3 Amendment of Judicial Officers Act 1986
No 100**

(Section 3)

Section 44 Retirement of judicial officers

Omit “65 years” from section 44 (3). Insert instead “72 years”.

**Schedule 4 Amendment of Local Courts (Civil Claims)
Act 1970 No 11**

(Section 3)

[1] Section 21H Arbitration under Arbitration (Civil Actions) Act 1983

Omit section 21H (3) (b) and (c).

[2] Schedule 2 Savings and transitional provisions

Insert at the end of the Schedule with appropriate Part and clause numbers:

**Part Provision consequent on enactment of Courts
Legislation Further Amendment Act 2001**

Application of amendment

Section 21H, as amended by the *Courts Legislation Further Amendment Act 2001*, extends to and in respect of proceedings instituted before the amendment took effect.

Schedule 5 Amendment of Supreme Court Act 1970 No 52

(Section 3)

[1] Section 26: Appointment and qualifications: Chief Justice and other Judges

Omit “is a” from section 26 (2) (a) and (b) and (3) (a).
Insert instead “is or has been a”.

[2] Section 26 (2) (d)

Insert at the end of section 26 (2) (c):

, or

- (d) is or has been a judge of the High Court or Federal Court of Australia or of the Supreme Court of another State or Territory.

[3] Section 26 (3) (c)

Insert at the end of section 26 (2) (b):

, or

- (c) is or has been a judge of the High Court or Federal Court of Australia or of the Supreme Court of another State or Territory.